1949.

File No. Laq Dwr/1

'Legal DEPARTMENT

A - BRANCH

Subject:— ~~High Court Appeals Nos 168 and 169 of 1948 in L.A.C. Dharwar.~~

Land Acquisition References relating to Dharwar District.

P.10=E

File No. Laq Dwr/49.

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Legal Department File No. Leg. Dwr. 149.

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	G.R.L.D. 7979 13/6/1950	Recording result of the above appeals.	

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Dharwar

Defence of High Court Appeals Nos.168 and 169 of 1948 under section 18 of the Land Acquisitio: Act.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 5106

Bombay Castle, 10th May 1949.

Letter from the District Government Pleader, Dharwar addr ssed to the Collector of Dharwar No.82 dated 24.1.1949 requesting sanction to the defence of Civil Appeals Nos. 168 and 169 of 1948 in the High Court, Bomb:

In the High Court of Judicature at Bombay.	:	
High Court Appeals Nos.168 and 169 of 1948.	:	
Appellant:- Siddavva Kom Basappa Tadsad, of Hubli.	:	
Versus.	:	
Respondent:-Special Land Acquisition Officer Hubli.	:	

on the lines of the awards made by the Special Land Acqui- sition Officer, Hubli dated 21.12.1943 and 8.1.1944 and on the grounds contained in the judgment of the Assistant Judge, Dharwar, dated 9.10.1947. Endorsement from the Collector of Dharwar No.L.A.W.494 dated 1st February 1949 forwarding the above with his concurrence.

RESOLUTION.- Sanction is accorded to the defence of Civil Appeals Nos. 168 and 169 of 1948 in the High Court Bombay on the lines of the awards made by the Special Land Acquisition Officer, Hubli dated 21.12.1943 and 8.1.1944 and on the grounds contained in the judgment of the Assistant Judge, Dharwar dated 9.10.1947.

By order of the Governor of Bombay.

R.T.Katarki,
Assistant Remembrancer of Legal Affairs.

The Revenue Department,
The Collector of Dharwar,
The Special Land Acquisition Officer, Hubli
The District Government Pleader, Dharwar,
The Government Pleader, High Court, Bombay.

Department of Health
Division of Vital Statistics
Bureau of Records and Statistics
Albany, New York

Dear Sir:

Enclosed please find a certificate of death for [illegible] which is
incomplete in the following particulars:

Please complete the certificate and return it to this office in the
enclosed envelope which requires no postage.

Very truly yours,

[illegible]
Registrar of Vital Statistics

3 -2/.

Sectioner Mr. Desai. W.A. 0 - 12- 0
Examiner Mr. Patil A.)
Reader Mr. Dawekar) 0 - 3- 0
Paper charges .. 0 - 0- 6

Total Rs. 0 - 15- 6

Annas fifteen and pies six only.

Supdt Decree Dept.
23-3-50

Copy applied for on 25-1-50
Copy ready on 27-3-50
Copy delivered on 30-3-50
V. P. P.
Sent by Book Post on
Superintendent
28-3

Appeal No. 168 of 1948 from Original Decree.

(Under Act I of 1894).

(With F.A.No. 169 of 1948).

Shiddawa Kom Basappa Tadasad .. ..) Appellant.
(Original Claimant))

Versus

The Special Land Acquisition Officer ..) Respondent.
(Original Referor Land-Acquisition Officer.. ..)

Appeal against the decision of B.V.Manjeshwar Esquire Assistant Judge at Dharwar in Miscellaneous Application No. 112 of 1944.

Mr. B. M.Kalagate Advocate for the Appellants.

The Additional Assistant Government Pleader for the Respondent.

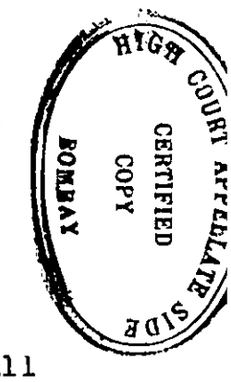
Coram:- Chagla C.J and Gajendragadkar, J.

23rd November 1949.

Oral Judgment (Per Chagla C.J.) :-

These two appeals arise out of two References made to the District Judge by the Land Acquisition Officer under Section 18 of the Land Acquisition Act.35 square Yards and 69 square yards belonging to C.S.No.456 at Hubli were acquired and the Land Acquisition Officer awarded to the claimant at the rate of Rs. 28-6-0 a square yard and the learned District Judge has confirmed that award.

Now, there is very little that the Appellant can say in support of this appeal. Becuase in the evidence that sl gave before the learned District Judge she was unable to point out on what basis she claimed a nigher amount than what was awarded by the Collector. The learned District Judge relied on three sale deeds which were also relied on by the Land Acquisition Officer and these three sale deeds all show that properties in the neighbournood about the same time were sold at Rs. 28 a square yard. The property under acquisition has a structure and these other three properties also were with structures and they were sold at Rs. 28 a square yard and therefore the learned Judge rightly took the view that as that was the only evidence before him Rs. 28-6-0 per sqaure yard was a fair compensation awarded to the claimant.



The learned Judge has discarded the basis of rental value on the ground that fair rents were not proved before him. The appellant attempted to prove that she recovered as much as Rs.500 and then Rs. 400 for a portion of the building which stood on the two plots which were acquired. As the learned Judge points out, the appellant failed to call the tenant who she alleged was paying her Rs. 400 namely, Ghelabhai, and she failed to produce the books of account of Narpal who she alleged was paying her Rs. 500 as he was dead at the time of the reference. Therefore there was no evidence to challenge the finding of the Land Acquisition Officer that she was only getting a rent of Rs. 225 a year and not Rs. 400 as she alleged. In any case we agree with the learned Judge that in this particular case the rental basis would not be a safe basis to adopt in order to determine the proper compensation to be paid to the appellant.

Mr.Kalagate has contended that S.No.456 has a double frontage and therefore something much more than six annas should be given in reference to the sale deeds which were proved in the Court below. Now, we find that the subject

matter of one of the sale deeds is Survey No. 460 and that also has a double frontage and there the rate was only Rs. 28. Therefore in our opinion the award made both by the Land Acquisition Officer and confirmed by the District Judge was a fair award and we see no reason to interfere with the decision come to by the Court below.

The result is both the appeals fail and are dismissed with costs.

By order of the Court,
Sd. S. H. Belavadi.
Deputy Registrar.

True copy

for Deputy Registrar.

The 24th day of April March 1950.

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED COPY

K. 790

	Rs	as	ps.	fols. 11
Sectioner Mr. Desai. W.A.	1 -	6-	0	
Examiner Mr. Purohit)	0 -	5-	0	
Reader Mr. Diwekar)				
Paper charges	0 -	0-	6	
Total Rs.	1 -11-	6		

Rupee one annas eleven and pies six only.

Supdt Decree Dept.
25-1-50

Copy applied for on 25-1-50.
Copy ready on 27-3-50
Copy delivered on 30-3-50
V. P. P.
sent by Regd. Post on

Assistant Superintendent.
28-3

In the High Court of Judicature at Bombay.

Wednesday the 23rd day of November 1949.

Appeal No. 168 of 1948 from Original Decree.

(Under Act I of 1894)

(With First Appeal No. 169 of 1948.)

Shiddawa kom Basappa Tadasad .. .. .. (original claimant) } Appellant.

Versus

The Special Land Acquisition Officer Hubli; } Respondent.
(Original Referor Land acquisiton officer)

Claim Rs. 2194-13-4 for both purposes.

The Applicant (the Special Land Acquisition Officer referred his award to the District Court under section 18 of the Land Acquisition Act.

The Miscellaneous Application No. 112 of 1944 was decided by the Assistant Judge of Dharwar who confirmed the award made by the Land Acquisition Officer with costs.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Hon'ble Mr. Justice Jahagirdar on the 9th day of July 1948.

The grounds of objection to the decision appaeled against are :-

1. That the decree of the lower court is contrary to law and against the weight of evidence.

2. The lower court erred in confirming both the awards made by the Land Acquisition Officer, holding that the claim

ant is not entitled to any additional compensation.

3. The lower court should have held that the rental value assessed by the Land Acquisition Officer at Rs. 400 per annum, is too low and that, therefore, the market value assessed by him is inadequate.

4. It should have been held that the market value of the entire acquired property together with structures thereon is not less than Rs. 10000.

5. It was wrong to hold that the claimant has led no evidence except her own words to show that the acquired property with structures thereon was worth the amount she claimed.

6. The lower court erred in entirely ignoring Exhibit 30, a purshis whereby both the pleaders for the claimant and the District Government Pleader agreed that the evidence in the Miscellaneous Applications Nos. 112 of 1944 and 118 of 1944 was to be recorded in one case and heard together in Miscellaneous application No. 48 of 1945.

7. The learned Assistant Judge, having observed that the material evidence is recorded in the companion Miscellaneous Application No. 48 of 1945, erred in law in not taking the same into consideration while considering the applications of the claimant.

HIGH COURT APPELLATE SIDE
CERTIFIED COPY
BOMBAY

8. The said negligence of the lower court has materially affected the estmated costs.

9. The lower court in relying on Exhibits 42,39 and 40, while dealing with the Miscellaneous Application 48 of 1945, varied the assessment made by the Special Land Acquisition Officer, Hubli. The lower court should have relied on these exhibits, while dealing with the claimant's application and granted the compensation asked for.

10. The lower court erred in valuing the claimant's property on the rental method.

11. The lower court itself has rejected the method is dealing with the Miscellaneous Application No. 48 of 1945, but erred in applying the said method while dealing with the present - - claimant's application.

12. The lower court should have taken into consideration the important situation of the acquired property which has a frontage on both the sides.

4-27
9

13. The valuation made by the two different Land Acquisition Officers, ought not to have been accepted as correct.

14. The lower court has ignored that the present claimant's property is situated in many much more advantageous position than that involved in Miscellaneous Application No. 48 of 1945.

15. The present claimant is, therefore, entitled to a higher rate of compensation than that awarded to the owners of the property in Miscellaneous Application No. 48 of 1945.

16. The lower court failed to take into consideration the damage bona fide resulting from the diminution of the profits of the land between the time of the publication of the declaration, and the time of the Collector's taking possession of the land.

17. The lower court while varying the award made in Miscellaneous application No. 48 of 1945, does not give any substantial reasons for not following the said method in the claimant's application.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

18. The lower court was not justified in ignoring the fact that the building and the strucutes in general is fairly in good condition.

19. The amount and the rate of compensation awarded by the Special Land Acquisition Officer in respect of the present claimant's property are not proper, adequate, legal and equitable and so the lower court ought not to have confirmed the award.

Note as to valuation:-

In the year 1942, the area of 35 square yards and 8 squar feet out of C.T.S. No. 456 was acquired and Rs. 1425 (i.e. Rs. 1019 on rental basis, Rs. 153,15 per cent under section 23 (2)(g) and Rs. 253 damages under section 23(1) in all Rs. 1425).

The Appellant claims Rs. 10,000 for the total area of 69 square yards plus 35 square yards and 8 square feet that is to say roughly 1/3rd of Rs. 10,00 in this, i.e. Rs. 3333-5-4 .Deducting therefrom the amount of Rs.1425 granted by t

the lower court, the appellant claims Rs. 1908-5-4 plus Rs. 286-4-0 being 15 per cent thereon -- 2194-13-4 in this appeal, and has paid the Court fee thereon. That is the claim for both purposes.

Coram:- Chagla C.J and Gajendragadkar, J.

For the reasons stated in the accompanying judgment, the Court confirms the order of the lower court and dismisses the appeal with costs.

23rd November 1949. Sd. S. H. Belavadi.
Deputy Registrar.

Bill of costs in the High Court.

By the Appellant --	Rs as ps.
Stamps for Memorandum of appeal	168 - 12- 0
Stamps for Copies of Decree and Judgment	1 - 14- 0
Stamps for Vakalatnama	2 - 8- 0
Bhatta for process	3 - 0- 0
Sectioner's fee	2 -11- 6
Advocate's fee	105 - 13- 6
Printing Charges	11 - 0- 0
Total Rs.	295-11- 0

By the Respondent --	Rs as ps.
Stamps for Vakalatnama (G.P.appears)	0 - 0- 0
Advocate's fee	105 -13- 6
Copying fee under rule 82 of 111 of the High Court appellate side Rules 1936....	1- 8- 0
Total Rs.	107 -5- 6

Sd. S. H. Belavadi.
Deputy Registrar.

(seal)

The 23rd day of November 1949.

True copy :

for Deputy Registrar.

The 25th day of January 1950.

17/29/1933
11

C. 789	As as ps. fols. 1½	
Sectioner Mr. Desai. W.A.	0 - 3- 0	
Examiner Mr. Nadkarni) Reader Mr. Nakhawa)	0 - 1- 0	Mk
Paper charges	0 - 0- 3	
Total As.	0 - 4- 3	

Annas four and pies three only.

Copy applied for on 25-11-49
Copy ready on 22-2-50
Copy delivered on 6-3-50
Sent by V.P.P. Regd. Post on

Supdt Decree Dept.
22-2-50

Assistant Superintendent
23-2

In His Majesty's High Court of Judicature at Bombay.

Order passed by the High Court in the case of --

Shiddawa kom Basappa Tadasad .. ..) Appellant
(Original Claimant))

Versus

The Special Land Acquisition Officer Hubli;) Respondent.
(Original Referor))

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Claim Rs. 4755-10-8 for both purposes.

Being Appeal No. 169 of 1946 from Original Decree.

(With First Appeal No. 168 of 1948)

(Under Act I of 1894)

Mr. B. M. Kalagate Advocate for the appellant.

The Additional Government Pleader ~~for the Government Pleader~~ for the Respondent.

Coram:- Chagla C.j and Gajendragadkar,J.

For the reasons stated in the judgment in First Appeal No. 168 of 1948 the Court confirms the order of the lower Court and dismisses the appeal with costs.

23rd November 1949. Sd. S.H.Belavadi.
Deputy Registrar.

True copy

for Deputy Registrar.

The 22nd day of February 1950.

K. 789

Rs as ps. fols. 10

Sectioner Mr. Desai. W.A.	1	4	0
Examiner Mr. Nadkarni / Reader Mr. Nakhwa	0	5	0
Paper charges	0	0	6
Total Rs.	1	9	6

Rupee one annas nine and pies six only.

Copy applied for on 25-11-49
Copy ready on 31-1-50
Copy delivered on 6-3-50

Dy. Registrar on

Assistant Superintendent.

Supdt Decree Dept. 31-1-50

23.2

In the High Court of Judicature at Bombay.

Wednesday the 23rd day of November 1949.

Appeal No. 169 of 1948 from Original Decree.

(With First Appeal No. 168 of 1948).

(Under Act I of 1894)

Shiddawa kom Basappa Tadasad .. .. ..) Appellant.
(Original Claimant))

Versus

The Special Land Acquisition Officer ,Hubli.) Respondent.
(Original Referor))

Claim Rs. 4755-10-8 for both purposes.

The Applicant (The Special Land Acquisition Officer) referred his award to the District Court under section 18 of the Land Acquisition Act.

The Miscellaneous Application No. 118 of 1944 was decided by the Assistant Judge of Dharwar who confirmed the award given by the Land Acquisition Officer with costs.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Hon'ble Mr. Justice Jahagirdar on the 9th day of July 1948.

The grounds of objection to the decision appealed against are:-

1. That the decree of the lower court is contrary to law and against the weight of evidence.

2. The lower court erred in confirming both the awards made by the Land Acquisition Officer holding that the claimant is not entitled to any additional compensation.

3. The lower court should have held that the rental value assessed by the Land Acquisition Officer at Rs.400 per annum is too low and that therefore the market value assessed by him is inadequate.

4. It should have been held that the mark-et value of the entire acquired property together with structures thereon is not less than Rs. 10,000.

5. It is wrong to hold that the claimant has led no evidence except her own words to show that the acquired property with structures thereon was worth the amount she claimed.

6. The lower court erred in entirely ignoring Exhibit 30 a purshis whereby both the pleaders for the claimant and the District Government Pleader agreed that the evidence in the Miscellaneous Applications Nos. 112 of 1944 and 118 of 1944 was to be recorded in one case and heard together in Miscellaneous Application No. 48 of 1945.

7. The learned Assistant Judge having observed that the material evidence is recorded in the Companion Miscellaneous Application No. 48 of 1945 erred in law in not taking the same into consideration while considering the applications of the claimant.

8. The said negligence of the lower court has materially affected the estimated cost.

9. The lower court relying on Exhibits 42,39 and 40 while dealing with the Miscellaneous Application No. 48 of 1945 varied the assess ment made by the Special Land Acquisition Officer, Hubli. The lower court should have relied on these exhibits while dealing with the claimant's application and granted the compensation asked for.

10. The lower court erred in valuing the claimant's property on the rental method.

11. The lower court itself has rejected the method in dealing with Miscellaneous Application No. 48 of 1945 erred in applying the said method while dealing with the present claimant's application.

12. The lower court should have taken into consideration the important situation of the acquired property which has a frontage on both the sides.

13. The valuations made by the two differnt Land Acquisition Officers ought not to have been accepted as correct.

14. The lower court has ignored that the present claimant's pro-

HIGH COURT APP. SIDE BOMBAY CERTIFIED COPY

Rs as ps. Fols. 10

K. 789

Sectioner Mr. Desai. W.A.	1 - 4- 0	
Examiner Mr. Nadkarni / Reader Mr. Nakhwa	0 - 5- 0	
Paper charges	0 - 0- 6	
Total Rs.	1- 9 - 6	

Rupee one annas nine and pies six only.

y applied for on 25-11-49
ready on 31-1-50
delivered on 6-3-50

Supdt Decree Dept.
31-1-50

Assistant Superintendent.
23.2

In the High Court of Judicature at Bombay.

Wednesday the 23rd day of November 1949.

Appeal No. 169 of 1948 from Original Decree.

(With First Appeal No. 168 of 1948).

(Under Act I of 1894)

Shiddawa kom Basappa Tadasad .. .. ..) Appellant.
(Original Claimant))

Versus

The Special Land Acquisition Officer ,Hubli.) Respondent.
(Original Referor))

Claim Rs. 4755-10-8 for both purposes.

The Applicant (The Special Land Acquisition Officer) referred his award to the District Court under section 18 of the Land Acquisition Act.

The Miscellaneous Application No. 118 of 1944 was decided by the Assistant Judge of Dharwar who confirmed the award given by the Land Acquisition Officer with costs.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Hon'ble Mr. Justice Jahagirdar on the 9th day of July 1948.

The grounds of objection to the decision appealed against are:-

1. That the decree of the lower court is contrary to law and against the weight of evidence.

2. The lower court erred in confirming both the awards made by the Land Acquisition Officer holding that the claimant is not entitled to any additional compensation.

perty is situated in much more advantageous position than that involved in Miscellaneous Application No. 48 of 1945.

15. The present Claimant is therefore entitled to a higher rate of compensation than that awarded to the owners of the property in Miscellaneous Application No. 48 of 1945.

16. The lower court failed to take into consideration the damage bona-fide resulting from the diminution of the profits of the land between the time of the publication of the declaration and the time of the Collector's taking possession of the land.

17. The lower court while varying the award made in Miscellaneous Application No. 48 of 1945 does not give any substantial reasons for for not following the said method in the claimant's application.

18. The lower court was not justified in ignoring the fact that the building and the structures in general is fairly in good condition.

19. The amount and the rate of compensation awarded by the Special Land Acquisition Officer in respect of the present Claimant's property are not proper, adequate, legal and equitable and so the lower Court ought not to have confirmed the award.

20. Note as to valuation:-

In the year 1941, the area of the 69 square yards and of C.T. S. No. 456 was acquired and Rs. 2532 (i.e. Rs. 1958 on rental basis, Rs. 294, 15 per cent under section 23(2)(g) and Rs. 280 damages under section 23(1) in all Rs. 2532).

The Appellant claims Rs. 10,000 for the total area of 69 square yards plus 35 square yards and 8 square feet that is to say roughly 2/3rd of Rs. 10,000 in this i.e. Rs. 6666-10-8. Deducting therefrom the amount of Rs. 2532 granted by the lower court the appellant claims Rs. 4134-10-8 and Rs. 621 being 15 per cent thereon -- 4,755 -10-8 in this appeal and has paid court fee thereon. That is the claim for both purposes.

Coram:- Chagla C. J. and Gajendragadkar, J.

For the reasons stated in the judgment in First Appeal No. 168 of 1948 the court confirms the order of the lower court and dismisses the appeal with costs.

23rd November 1949.

Sd. S. H. Belavadi.

Deputy Registrar.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Bill of costs in the High Court.

y the Appellant --	Rs	as	ps.
Stamps for Memorandum of appeal	331	- 4-	0
Stamps for Copies of Decree and Judgment	2	- 8	-0
Stamps for Vakalatnama	2	- 8-	0
Bhatta for process	4	- 0-	0
Sectioner's fee	0	- 5-	6
Advocate's fee	182	- 10-	8
Printing charges	11	- 0-	0
Copying charges for preapring paper books ...	28	-11-	0
Total Rs.	562	- 15-	2

By the Respondent --	Rs	as	ps.
Stamps for Vakalatnama .. (The G.P. appears)	0	- 0-	0
Advocate's fee	182	-10-	8
Copying fee under Rule 82 or 111 of the High Court Appellate Side Rules, 1936.	4	- 2-	0
Total Rs.	186	-12-	8

(seal)

Sd. S. H. Belavadi.
Deputy Registrar.

The 23rd day of November 1949.

True copy.

for Deputy Registrar.

The 31st day of January 1950.

Dharwar.

Defence of High Court Appeals Nos.168 and 169 of 1948 under section 18 of the Land Aquisition Act.

VERNMENT OF BOMBAY.
Legal Department,
Resolution No. 7979
mbay Castle, June 1950.

Letters from the Government Pleader, High Court, Bombay Nos. 42 and 44, dated the 3rd January 1950, stating that the appeals note in the margi were decided by the High Court, on th 23rd Novembe 1949, when t following order was passed.

In the High Court of Judicature at Bombay.
High Court Appeals Nos.168 and 169 of 1948.

Appellant :- Siddavva Kom Basappa Tadsad, of Hubli.
Vs.
Respondent :- Special Land Acquisition Officer, Hubli.

" The Court confirms the order of the Lower Court and dismisses the appeal with costs. "

Letters from the Government Pleader, High Court, Bomba Nos. 1249 and 1805, dated the 8th March 1950 and the 1st April 195 forwarding certified copies of the judgment and decree.

RESOLUTION:- The result of the appeals is recorded.

By order of the Governor of Bombay,

original R. M. Mehta

R. M. Mehta,
Assistant Secretary to Government

To
The Revenue Department,
The Collector of Dharwar,
The Special Land Aquisition Officer, H

Issued
13/6

DDM.
9/6.

ruled for rein.

18

Subd affs agene
file in Civ Appeals Dir 50
Lar 7772
13 M
14/6